

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

LARRY D. STEVENSON,
Claimant Below, Petitioner

vs.) No. 100756 (BOR Appeal No. 2043760)
(Claim No. 2007218817)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

LAUREL COAL CORPORATION,
Employer Below, Respondent

FILED
July 19, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated May 25, 2010, in which the Board affirmed a November 29, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's granting of a 5% permanent partial disability award on August 27, 2008, and it granted Mr. Stevenson a 10% permanent partial disability award. The appeal was timely filed by the petitioner, and Laurel Coal Corporation filed a response. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, the Court is of the opinion that this case is appropriate for consideration under the Revised Rules. Having considered the parties' submissions and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review affirmed the granting of a 10% permanent partial disability award. Mr. Stevenson argues that insufficient weight was given to his evaluating physician's report, which recommended 13% permanent partial disability. The Office of Judges, however, found this report to be less reliable than the reports of two other evaluating physicians. (Oct. 29, 2009 Office of Judges Order, p. 4.) The Office of Judges noted that Drs. R. Padmanaban and Saghir Mir both found the same amount of impairment due to loss of motion in the right shoulder. *Id.* Dr. Clifford Carlson, however, who evaluated Mr. Stevenson in between the time that the other two doctors did, found a fairly significant increase in loss of motion. *Id.* Thus, the Office of Judges found that whatever impairment Dr. Carlson found was not permanent in nature as it did not exist either prior to or after his examination, and 10% whole person impairment was found to be the most accurate estimation of Mr. Stevenson's compensable impairment. *Id.* The Board of Review reached the same reasoned conclusion in its decision of May 25, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning and conclusions, there is insufficient support to sustain the decision. Therefore, the granting of a 10% permanent partial disability award is affirmed.

Affirmed.

ISSUED: July 19, 2011

CONCURRED IN BY:

Chief Justice Margaret Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh